

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
MARK CUBAN,)	
)	
Plaintiff,)	
)	
v.)	Case: 1:09-cv-00996 RBW
)	Assigned: Walton, Reggie B.
SECURITIES AND EXCHANGE)	Description: FOIA/Privacy Act
COMMISSION,)	
)	
Defendant.)	
)	

**DEFENDANT SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR
LEAVE TO FILE A SUPPLEMENTAL STATUS REPORT REGARDING PLAINTIFF’S
PROPOSAL TO PAY FOR SEARCH AND APPLICATION
OF EXEMPTION 7(A) TO DOCUMENTS RELATING TO ONGOING
ENFORCEMENT ACTION**

Defendant Securities and Exchange Commission (“SEC” or “Commission”) herby moves for leave to file the attached Supplemental Status Report. Good cause exists to grant this motion:

1. On October 22, 2010, the Court ordered the Commission to file a status report by December 1, 2010, and Cuban to file a response by December 10, 2010.
2. On December 1, 2010, the SEC filed a “Status Report Regarding Plaintiff’s Proposal to Pay for Search and Application of Exemption 7(A) to Documents relating to Ongoing Enforcement Action” (“Status Report”).
3. On December 14, 2010, after receiving an extension of time, Cuban filed a submission styled “Plaintiff Mark Cuban’s Response to Defendant’s Status Report Regarding Plaintiff’s Proposal to Pay For Search and Application of Exemption 7(A) to Documents Relating to Ongoing Enforcement Action” (“Cuban’s Response”).

4. A status conference relating to the SEC's Status Report and Cuban's Response is scheduled for February 1, 2011.
5. In the instant case, the Commission seeks leave to file a Supplemental Status Report to respond to certain issues raised in Cuban's Response. Specifically, the Commission intends to address: (i) The SEC's reasons for declining Cuban's proposal to pay for the processing of his FOIA requests, and (ii) the validity of the SEC's assertion of FOIA Exemption 7(A) in connection with certain investigative materials.
6. The Commission's Supplemental Status Report will be analogous to a reply brief. Under this Court's Local Rules, the party seeking relief in connection with a particular motion typically has an opportunity to reply to any opposition to the relief being sought. *See, e.g., LCvR 7(d)*(permitting reply briefs); *see also Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 292-292 (N. D. Tex. 1988) (en banc) ("the principle is well-established that the party with the burden on a particular matter will normally be permitted to open and close the briefing. It should thus be a rarity that a party who opposes a motion will object to the movant's filing a reply.").
7. Counsel for the Commission contacted George Anhang, counsel for Cuban, in connection with this motion and in compliance with Local Rule 7(m). Mr. Anhang indicated that Cuban opposes this motion.

